

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN DOE, M.D.,

Plaintiff,

v.

Case No. 21-cv-13032
Hon. Gershwin Drain
Hon Mag. Judge Curtis Ivy, Jr

THE BOARD OF REGENTS OF THE
UNIVERSITY OF MICHIGAN, MARIE
LOZON, M.D., and JUSTIN DIMICK,
M.D., Individually,

Defendants.

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**DEFENDANTS' MOTION TO PERMIT THE FILING OF
SUPPLEMENTAL BRIEF AND DECLARATIONS IN
RESPONSE TO ECF NO. 3**

The undersigned certifies that he contacted Saif Kasmikha and Ronald Acho (both counsel for Plaintiff) by email on May 5, 2022 and explained the nature of the motion and its legal basis and requested but did not obtain unconditional concurrence in the relief sought.

Defendants, by and through their attorneys, hereby move this Court pursuant to LR 7.1(d)(1)(A), for an order granting this Motion and permitting Defendants to file Ex. A attached hereto, in supplementation of their responses to Plaintiff's request in ECF No. 3 for preliminary injunctive relief. This Motion rests on the following factual and legal grounds:

1. Local Rule 7.1(d)(1)(A) gives this Court discretion to allow briefing in addition to a motion, response and reply brief.

2. On December 29, 2021, Plaintiff filed a Motion for Temporary Restraining Order and Order to Show Cause Why A Preliminary Injunction Should Not Be Issued (ECF No. 3).

3. Defendants submitted responses to those Motions, which responses are the subject of a pending and unopposed Motion to Seal under LR 5.3. (ECF No. 16).

4. On January 14, 2022, this Court issued an Order Denying Plaintiff's Motion for Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Be Issued. (ECF No. 28).

5. In that Order, the Court ruled that the injunctive relief Plaintiff sought was not appropriate and denied the Motion. It also ordered briefing on other motions

without requesting additional briefing on Plaintiff's requested preliminary injunction in ECF No. 3. (Page.ID 735, 739).

6. Defendants therefore understood that the January 14 Order disposed not only of Plaintiff's request for a temporary restraining order but also of Plaintiff's request for a preliminary injunction.

7. However, in this Court's Notice of Hearing by Video Conference (ECF. No. 52), it listed ECF No. 3 as being among the Motions to be heard on May 12, 2022.

8. To whatever extent Plaintiff's request for a preliminary injunction remains at issue, Defendants ask that this Court permit them to file the Supplemental Brief containing two Declarations, which Brief (and Declarations) is attached as Ex. A.

9. The first Declaration is that of Dr. Marie Lozon, which updates the Court on the fact that the Fair Hearing Plaintiff sought to compel through ECF No. 3 is scheduled to begin on May 10, 2022.

10. The second Declaration is that of Dr. Brian Zink. That Declaration provides additional information relating to Plaintiff's allegation in ECF No. 3 that Defendants reduced his pay (PageID.78), and which Plaintiff falsely suggested in

subsequent filings involved the academic portion of his salary.¹ The Declaration of Dr. Zink explains that only the clinical portion of Plaintiff's salary (which is considered at-risk and not protected) was reduced, while the academic portion of Plaintiff's salary, associated with his tenure, remains intact.

WHEREFORE, and for the foregoing reasons, Defendants respectfully request that this Honorable Court enter an Order granting this Motion and permitting Defendants to file Ex. A attached hereto in supplementation of their responses to Plaintiff's request in ECF No. 3 for preliminary injunctive relief.

Respectfully submitted,

HALL RENDER KILLIAN HEATH & LYMAN, PC

/s/ Jonathon A. Rabin

Jonathon A. Rabin (P57145)

Attorneys for Defendants

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Dated: May 5, 2022

¹ These subsequent filings included Plaintiff's Motion for Leave to Amend the Complaint and Plaintiff's proposed Amended Complaint (ECF No. 38, PageID.929; ECF No. 38-1, PageID.962-963, 966-970).

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**BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO
PERMIT THE FILING OF SUPPLEMENTAL BRIEF AND
DECLARATIONS IN RESPONSE TO ECF NO. 3**

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CONCISE STATEMENT OF THE ISSUE PRESENTED

1. Should enter an order authorizing Defendants to file the Supplemental Brief attached hereto as Ex. A in supplementation of their responses to Plaintiff's request in ECF No. 3 for preliminary injunctive relief?

Defendants answer "yes."

**CONTROLLING OR MOST APPROPRIATE
AUTHORITY FOR RELIEF SOUGHT**

Rules

Local Rule 7.1(d)(1)(a) of the Eastern District of Michigan

ARGUMENT

In support of the instant Motion, Defendants rely upon LR 7.1(d)(1)(A).

Respectfully submitted,

HALL RENDER KILLIAN HEATH & LYMAN, PC

/s/ Jonathon A. Rabin

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CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2022, I electronically filed the foregoing document and this Certificate of Service with the Clerk of the Court using the ECF system, which will send notification of such filing to attorneys of record at their registered e-mail addresses and will mail the same to Mr. Charles Blackwell at the following address:

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